

Juanita R. Brooks, SBN 75934, brooks@fr.com  
Todd G. Miller, SBN 163200, miller@fr.com  
Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, CA 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099

Mathias W. Samuel, pro hac vice, samuel@fr.com  
Michael J. Florey, pro hac vice, florey@fr.com  
Thomas S. McClenahan, SBN 203204, mcclenahan@fr.com  
Michael J. Pape, pro hac vice, pape@fr.com  
Fish & Richardson P.C.  
60 South Sixth Street, Suite 3300  
Minneapolis, MN 55402  
Telephone: (612) 335-5070  
Facsimile: (612) 288-9696

Limin Zheng, SBN 226875, zheng@fr.com  
Fish & Richardson P.C.  
500 Arguello Street, Suite 500  
Redwood City, CA 94063  
Telephone: (650) 839-5070  
Facsimile: (650) 839-5071

Attorneys for Plaintiffs/Counterclaim Defendants  
Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

FRESENIUS MEDICAL CARE HOLDINGS,  
INC., a New York corporation; and FRESENIUS  
USA, INC., a Massachusetts corporation,

Plaintiffs and Counter-  
Defendants,

v.

BAXTER INTERNATIONAL, INC., a  
Delaware corporation; and BAXTER  
HEALTHCARE CORPORATION, a  
Delaware corporation,

Defendants and Counterclaimants.

Case No. C 03-01431 PJH (EMC)

**FRESENIUS' STATEMENT OF RECENT  
DECISIONS & REQUEST TO SUBMIT  
ADDITIONAL MATERIALS;  
[PROPOSED] ORDER**

Defendants Baxter International, Inc. and Baxter Healthcare Corporation's (collectively, "Baxter") Motion For Decision On Limited Remand Issues [Dkt. 1048] and Plaintiffs Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.'s (collectively "Fresenius") Motion For New Trial To Determine Damages For U.S. Patent No. 5,247,434 [Dkt. 1042] and Fresenius's Motion To Stay Remand Proceedings [Dkt. 1044] are currently pending before the Court.

The United States Court of Appeals for the Federal Circuit has since last February decided several cases that directly impact the issues presented by these pending motions. Pursuant to Civil Local Rule 7-3(d), Fresenius respectfully submits the following relevant Federal Circuit opinions published after the date the opposition to Baxter's motion or replies in support of Fresenius' motions were filed:

- *Uniloc USA, Inc. v. Microsoft Corporation*, -- F.3d --, 2011 WL 9738 (Fed. Cir. Jan. 4, 2011) (copy attached as Attachment A)
- *Wordtech Systems, Inc. v. Integrated Network Solutions, Inc.*, 609 F.3d 1308 (Fed. Cir. 2010) (copy attached as Attachment B)
- *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010) (copy attached as Attachment C)

Further pursuant to Civil Local Rule 7-3(d), Fresenius respectfully requests permission from the Court to submit a two-page letter brief to state the relevancy of these decisions, including an identification of relevant portions of the trial record and the briefs that pertain to the pending motions and impacted by the recent decisions.

Dated: January 24, 2011

FISH & RICHARDSON P.C.

By: /s/ Michael E. Florey  
Michael E. Florey

Attorneys for Plaintiffs/Counterclaim  
Defendants  
FRESENIUS MEDICAL CARE HOLDINGS,  
INC. AND FRESENIUS USA, INC.

**[PROPOSED] ORDER**

Good cause having been shown, the Court grants Fresenius' request to submit a letter brief, limited to no more than two pages, within seven (7) days of the issuance of this Order, to state the relevancy of the recent Federal Circuit opinions *Uniloc USA, Inc. v. Microsoft Corporation*, -- F.3d --, 2011 WL 9738 (Fed. Cir. Jan. 4, 2011); *Wordtech Systems, Inc. v. Integrated Network Solutions, Inc.*, 609 F.3d 1308 (Fed. Cir. 2010); and *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010), to the pending motions (Dkt. Nos. 1042; 1044; 1048).

Baxter may thereafter submit a response letter brief, limited to no more than two pages, within seven (7) days of Fresenius' filing of its letter brief.

IT IS SO ORDERED.

Dated: January 26, 2011

